

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

DAVID M.,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

Defendant.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:22-cv-00329-JNP-JCB

Judge Jill N. Parrish

Magistrate Judge Jared C. Bennett issued a Report and Recommendation that the court dismiss plaintiff David M.'s action without prejudice for failure to prosecute. Judge Bennett notified David M. that a failure to file a timely objection to his recommendation could waive any objections to it. No objection was filed within the allotted time.

Because David M. did not object to the Report and Recommendation, any argument that it was in error has been waived. *See United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996). The court will decline to apply the waiver rule only if “the interests of justice so dictate.” *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991). In determining whether the interests of justice require an exception to the waiver rule, the Tenth Circuit has “considered factors such as ‘a *pro se* litigant’s effort to comply, the force and plausibility of the explanation for his failure to comply, and the importance of the issues raised.’” *Duffield v. Jackson*, 545 F.3d 1234, 1238 (10th Cir. 2008). In this case, there is no indication that the interests of justice require it to deviate from the waiver rule. Thus, the court finds that the interests of justice do not warrant deviation from the waiver rule and ADOPTS IN FULL the Report and Recommendation.

Accordingly, the court ORDERS as follows:

1. The Report and Recommendation, ECF No. 26, is ADOPTED IN FULL.
2. The court DISMISSES this action without prejudice.

DATED May 15, 2023.

BY THE COURT:



JILL N. PARRISH
United States District Judge